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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JODI L. CRANE,  
  
Plaintiff,  
  
v.  
  
CITY OF DUNSMUIR et al.,  
  
Defendants.

No. 2:21-cv-00022-TLN-CKD PS

FINDINGS AND RECOMMENDATIONS

Plaintiff Jodi Crane proceeds pro se in this civil rights action brought under 42 U.S.C. § 1983. Plaintiff alleges violations of her constitutional rights in connection with the closure of her business. She names as defendants the City of Dunsmuir and three city officials. Defendants’ motion to dismiss the second amended complaint came on regularly for hearing on April 28, 2021. Plaintiff appeared pro se; attorney Melissa Currier appeared on behalf of defendants.

Having thoroughly considered the operative complaint, the parties’ written and oral arguments, and the full court record in this matter, the undersigned recommends the motion to dismiss be granted and the second amended complaint be dismissed. The undersigned further recommends that plaintiff be granted leave to file an amended complaint attempting to state a valid claim against defendant Juhasz, but that the other named defendants be dismissed from the case without further leave to amend.

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1 **I. PROCEDURAL BACKGROUND**

2 Plaintiff originally filed this civil rights action in the United States District Court for the  
3 Northern District of California. On November 16, 2020, the court screened the complaint and  
4 found the complaint did not state a cognizable claim for relief. The court dismissed the complaint  
5 with leave to amend. On December 16, 2020, plaintiff filed an amended complaint. On January 4,  
6 2021, the case was transferred to this court.

7 Defendants successfully moved to dismiss the first amended complaint. Plaintiff was  
8 granted leave to file a second amended complaint. Plaintiff filed a second amended complaint on  
9 March 8, 2021. (ECF No. 28.)

10 Defendants moved to dismiss the second amended complaint (hereinafter “SAC”). (ECF  
11 No. 29.) Plaintiff opposed the motion and defendants filed a reply. (ECF Nos. 30, 31.)

12 **II. LEGAL STANDARD FOR A MOTION TO DISMISS**

13 Dismissal under Rule 12(b)(6) may be warranted for “the lack of a cognizable legal theory  
14 or the absence of sufficient facts alleged under a cognizable legal theory.” Balistreri v. Pacifica  
15 Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1990). In evaluating whether a complaint states a claim  
16 on which relief may be granted, the court accepts as true the allegations in the complaint and  
17 construes the allegations in the light most favorable to the plaintiff. Hishon v. King & Spalding,  
18 467 U.S. 69, 73 (1984); Love v. United States, 915 F.2d 1242, 1245 (9th Cir. 1989). The court  
19 will not, however, assume the truth of legal conclusions cast in the form of factual allegations.  
20 United States ex rel. Chunie v. Ringrose, 788 F.2d 638, 643 n.2 (9th Cir. 1986).

21 “[R]ecitals of the elements of a cause of action, supported by mere conclusory statements,  
22 do not suffice” to state a valid claim for relief. Ashcroft v. Iqbal, 556 U.S. 662, 676 (2009). A  
23 complaint must do more than allege mere “labels and conclusions” or “a formulaic recitation of  
24 the elements of a cause of action.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). In  
25 order to state a valid claim for relief, a plaintiff must allege “enough facts to state a claim to relief  
26 that is plausible on its face.” Twombly, 550 U.S. at 570. A claim that is plausible on its face has  
27 sufficient factual content to allow a reasonable inference that the defendant is liable for the  
28 misconduct alleged. Iqbal, 556 U.S. at 678.

1 Courts of this circuit recognize their duty “to ensure that pro se litigants do not lose their  
2 right to a hearing on the merits of their claim due to ignorance of technical procedural  
3 requirements.” Balistreri, 901 F.2d at 699. As such, the pleadings of pro se litigants “are liberally  
4 construed, particularly where civil rights claims are involved.” Id. However, a court’s “liberal  
5 interpretation of a civil rights complaint may not supply essential elements of [a] claim that were  
6 not initially pled.” Ivey v. Bd. of Regents of Univ. of Alaska, 673 F.2d 266, 268 (9th Cir. 1982).  
7 Thus, a pro se plaintiff’s complaint which offers only “vague and conclusory allegations of  
8 official participation in civil rights violations” does not state a claim “sufficient to withstand a  
9 motion to dismiss.” Id.

### 10 **III. DISCUSSION**

#### 11 **A. ALLEGATIONS IN THE SAC**

12 Plaintiff’s allegations remain somewhat difficult to discern. It appears that plaintiff  
13 operated a retail store located at 4737 Dunsmuir Avenue. In June of 2020, her business license  
14 was due for renewal. Plaintiff sent the required documents and funds for renewal, but “all monies  
15 [were] held from 6/10/20 [until] 7/22/2” (ECF No. 28 at 4) and her license expired on June 30,  
16 2020.<sup>1</sup> Defendant Juhasz then ordered the building inspector not to inspect the building. (ECF No.  
17 28 at 4, 14.)

18 Subsequently, defendant Padilla, the fire chief, deemed the commercial building in which  
19 the business was located to be a danger. This determination was based on a false report of a  
20 violation involving the use of a generator. Plaintiff alleges defendant Juhasz shut down the  
21 building without following proper procedures and without giving plaintiff notice or a hearing.  
22 Plaintiff’s locks were cut and replaced with the city’s locks. She was barred from being on the  
23 property and threatened with arrest by law enforcement if she came to the property. Plaintiff has  
24 \$89,000 worth of retail goods inside the building which she has been unable to access since being  
25 locked out of the building. (ECF No. 28 at 4, 14.)

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27  
28 <sup>1</sup> The reasons for the expiration or non-renewal of the business license remain unclear.

1 Plaintiff alleges that defendants unlawfully conspired against her, seized her property, and  
2 violated her due process rights. She seeks damages and a writ of possession as to the building and  
3 her property inside. (ECF No. 6, 16.) As she did in prior complaints, plaintiff names as defendants  
4 the City of Dunsmuir, Mayor Juliana Lucchessi, City Manager Todd Juhasz, and Fire Chief  
5 Daniel Padilla.

6 **B. DEFENDANTS' MOTION TO DISMISS**

7 Defendants move to dismiss the SAC on the following grounds:

8 (1) The SAC fails to state facts sufficient to state a cognizable claim  
9 against any defendant, and because plaintiff has already been  
10 afforded multiple opportunities to amend, the SAC should be  
dismissed without further leave to amend;

11 (2) The due process [claim] contained in the SAC pursuant to 42  
12 U.S.C. is legally invalid against the City of Dunsmuir, and should be  
dismissed without leave to amend;

13 (3) To the extent Plaintiff attempts to bring a due process claim  
14 pursuant to the Fifth Amendment, the claim is legally invalid as none  
of the individual Defendants are federal employees;

15 (4) The individual Defendants are entitled to qualified immunity,  
and the SAC should be dismissed without leave to amend.

16 (ECF No. 29 at 2.)

17 **C. SECTION 1983 STANDARDS**

18 Section 1983 “provides a cause of action for the ‘deprivation of any rights, privileges, or  
19 immunities secured by the Constitution and laws’ of the United States.” Wilder v. Virginia Hosp.  
20 Ass’n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). To state a claim under section 1983,  
21 a plaintiff must allege two essential elements: (1) the deprivation of a right secured by the federal  
22 Constitution or statutory law, and (2) that the alleged deprivation was committed by a person  
23 acting under the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

24 “A person ‘subjects’ another to the deprivation of a constitutional right, within the  
25 meaning of section 1983, if he does an affirmative act, participates in another’s affirmative acts,  
26 or omits to perform an act which he is legally required to do that causes the deprivation of which  
27 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir.1978). “The requisite causal  
28 connection can be established not only by some kind of direct, personal participation in the

1 deprivation, but also by setting in motion a series of acts by others which the actor knows or  
2 reasonably should know would cause others to inflict the constitutional injury.” Id. at 743-44.

3 **D. CLAIMS AGAINST THE CITY SHOULD BE DISMISSED WITHOUT**  
4 **LEAVE TO AMEND**

5 As plaintiff was previously cautioned, a section 1983 claim against the City must be  
6 premised on a policy or custom that allegedly inflicted the injury. See Monell v. Dep’t of Soc.  
7 Servs. of the City of New York, 436 U.S. 658, 690-91, 694 (1978); Oviatt v. Pearce, 954 F.2d  
8 1470, 1474 (9th Cir. 1992) (quoting City of Canton v. Harris, 489 U.S. 378, 389-91 (1989)). Even  
9 though municipalities may be held liable for section 1983 violations, a plaintiff may not hold a  
10 local government unit vicariously liable for the constitutional torts of its employees. Bd. of Cty.  
11 Comm’rs of Bryan Cty., Okl. v. Brown, 520 U.S. 397, 403 (1997). Instead, through what has  
12 been termed a Monell claim, a plaintiff “seeking to impose liability on a municipality under §  
13 1983 [must] identify a municipal ‘policy’ or ‘custom’ that caused the plaintiff’s injury.” Id.  
14 Municipal liability in a § 1983 case may be premised upon: (1) an official policy; (2) a  
15 “longstanding practice or custom which constitutes the standard operating procedure of the local  
16 government entity;” (3) the act of an “official whose acts fairly represent official policy such that  
17 the challenged action constituted official policy;” or (4) where “an official with final policy-  
18 making authority delegated that authority to, or ratified the decision of, a subordinate.” Price v.  
19 Sery, 513 F.3d 962, 966 (9th Cir. 2008).

20 Here, plaintiff does not allege the existence of a policy or custom that caused the alleged  
21 deprivation. Plaintiff has not stated a valid Monell claim against the City. See Price, 513 F.3d at  
22 966. The undersigned will recommend defendants’ motion to dismiss be granted without leave to  
23 amend as to plaintiff’s claims against the city.

24 **E. OTHER CLAIMS FOR WHICH FURTHER LEAVE TO AMEND WOULD**  
25 **BE FUTILE**

26 Defendants assert the Fifth Amendment is inapplicable because plaintiff does not allege  
27 the involvement of a federal actor. To the extent any claim is brought under the Fifth  
28 Amendment, defendants request dismissal of that claim. (ECF No. 29 at 2; ECF No. 29-1 at 7.)

1 Defendants' motion should be granted on this point. See Betts v. Brady, 316 U.S. 455, 462  
2 (1942).

3 In addition, the SAC does not state a valid claim for "discrimination" or conspiracy.  
4 Plaintiff concludes she was discriminated against by defendants yet fails to allege any facts to  
5 show on what basis the discrimination allegedly occurred. Plaintiff similarly alleges defendants  
6 conspired to keep her business closed but does not allege any specific facts suggesting defendants  
7 engaged in a conspiracy to deprive her of her rights. See Burns v. County of King, 883 F.2d 819,  
8 821 (9th Cir. 1989) (holding that in order to state a claim for conspiracy under section 1983, a  
9 plaintiff must allege "specific facts to support the existence of the claimed conspiracy").  
10 Plaintiff's allegations that the city officials discriminated against her in a conspiracy to keep her  
11 business closed do not support a plausible claim for relief. The undersigned will recommend  
12 defendants' motion to dismiss be granted without further leave to amend as to plaintiff's claims  
13 premised on general discrimination and conspiracy.

#### 14 **F. CLAIMS AGAINST THE INDIVIDUAL DEFENDANTS**

15 Defendants assert that plaintiff's allegations remain too conclusory to state a valid claim  
16 against the city officials. Defendants note the court's previous order found plaintiff failed to  
17 allege sufficient facts to make her claims against the individual defendants plausible. Defendants  
18 argue the same defects are present in the SAC. (ECF No. 29-1 at 6.)

19 Defendants assert plaintiff fails to allege a potential constitutional violation by Mayor  
20 Lucchessi, whom plaintiff alleges sent her an email and generally discriminated against her. (Id.  
21 at 4, 12.) These facts are insufficient to state a valid claim. The undersigned will recommend the  
22 motion to dismiss be granted as to plaintiff's claims against defendant Lucchessi and that such  
23 claims be dismissed without further leave to amend.

24 Defendants argue the claims in the SAC against City Manager Juhasz and Fire Chief  
25 Padilla rest on the same conclusory allegations as previous pleadings—that plaintiff's business  
26 was "deemed a danger" without the "due process" of a building inspection, and that Juhasz and  
27 Padilla discriminated against her by conspiring to violate her right to due process and force her  
28 business to close. (ECF No. 29-1 at 6, quoting ECF No. 28 at 4.) Defendants argue these

1 allegations are insufficient to identify either defendant's role in any alleged constitutional  
2 violation. The undersigned agrees plaintiff's allegations against defendant Padilla for the alleged  
3 false violation fail to state a valid claim and that further leave to amend would be futile. As set  
4 forth below, however, the undersigned will recommend plaintiff be given leave to file a third  
5 amended complaint attempting to state a valid claim against defendant Juhasz.

### 6 **1. FOURTH AMENDMENT**

7 The SAC alleges plaintiff's property inside the building was unlawfully seized. Fourth  
8 Amendment protection against unreasonable searches and seizures applies in the civil context.  
9 Soldal v. Cook Cty., Ill., 506 U.S. 56, 67 (1992). In addition, "[t]he Fourth Amendment applies to  
10 commercial premises as well as to private homes." Tucson Woman's Fife Clinic v. Eden, 379 F.3d  
11 531, 550 (9th Cir. 2004) (quoting United States v. Argent Chem. Labs., Inc., 93 F.3d 572, 575  
12 (9th Cir. 1996)).

13 "A seizure is a 'meaningful interference with an individual's possessory interests in her  
14 property.'" Brewster v. Beck, 859 F.3d 1194, 1196 (9th Cir. 2017); Soldal, 506 U.S. at 61. "A  
15 seizure conducted without a warrant is per se unreasonable under the Fourth Amendment—  
16 subject only to a few specifically established and well delineated exceptions." Soldal, 506 U.S. at  
17 67 (citation omitted); see also U.S. v. Place, 462 U.S. 696, 701 (1983).

18 Defendants argue plaintiff merely concludes the commercial building was seized without  
19 any legal procedures. Defendants argue the SAC fails to coherently explain how she had any right  
20 to the property at issue, how the property was seized, or allege any facts to support her conclusion  
21 that the individual defendants were involved in the seizure. (ECF No. 29-1 at 6.)

22 In order to assert a Fourth Amendment claim premised on the unreasonable seizure of  
23 property, an individual must, indeed, have a proprietary or possessory interest in that property.  
24 Brown v. United States, 411 U.S. 223, 229 (1973)). The facts alleged in the SAC permit an  
25 inference that plaintiff had some type of possessory interest in the property. In addition, the SAC  
26 alleges a meaningful interference with plaintiff's possession of her personal property inside the  
27 building. Since plaintiff's locks were cut and replaced with city locks, plaintiff has been unable to  
28 access her property inside the building and risks arrest if she goes there. Although plaintiff does

1 not specifically allege her property has been seized without a warrant, she alleges she was locked  
2 out of the building without being contacted, without a “citation” or “letter of seizure” and without  
3 an inventory. (ECF No. 28 at 4, 5, 7, 14.)

4 In addition, plaintiff has alleged facts suggesting that defendant Juhasz may be personally  
5 responsible in that he directed that plaintiff’s locks be cut, after which they were replaced with  
6 city locks. Plaintiff further alleges defendant Juhasz is responsible to the extent he ordered she not  
7 be allowed on the property. (ECF No. 28 at 4, 14.)

8 Although it is being recommended the motion to dismiss the SAC be granted, it is further  
9 recommended plaintiff be granted leave to file a third amended complaint attempting to state a  
10 valid claim against defendant Juhasz. If these findings and recommendations are adopted by the  
11 district judge and plaintiff elects to file a third amended complaint, she should focus on including  
12 the “who, what, when, and how” of what happened that led to her being locked out of the  
13 building, to the best of her knowledge.<sup>2</sup>

## 14 **2. FOURTEENTH AMENDMENT**

15 The SAC alleges a violation of due process. “No State shall . . . deprive any person of life,  
16 liberty, or property, without due process of law.” U.S. Const., amend. XIV § 1. A section 1983  
17 claim based upon procedural due process has three elements: (1) a liberty or property interest  
18 protected by the Constitution; (2) a deprivation of the interest by the government, and (3) lack of

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19  
20 <sup>2</sup> Plaintiff appears to allege, and argued at the hearing on this matter, that she was never given any  
21 justification, whether true or false, adequate or inadequate, for her locks being cut and replaced. It  
22 seems that there might be additional facts plaintiff could plead to put her claim(s) in context and  
23 to give them facial plausibility. For example, plaintiff alleges there was, initially, a “false”  
24 building violation, but she does not identify what type of “violation” it was, how and when she  
25 received notice of the violation, what actions she took to attempt to communicate with any city  
26 official about the violation, or what response plaintiff was given. Additionally, the allegation of a  
27 false building violation is somewhat inconsistent with her allegation that she received no  
28 “citation” or “notice” regarding the building closure. More factual context is needed in order to  
state a valid claim for relief. In addition, for example, plaintiff alleges Mayor Lucchessi sent her  
an email. This allegation suggests the contents of the email pertained to the allegations in the  
SAC, but plaintiff does not state what the email said. In any third amended complaint plaintiff  
may file, she may not plead claims against any dismissed defendants, however, plaintiff may  
include factual allegations pertaining to communications with dismissed defendants if those  
allegations will help to put her claims in factual context.

1 process. Portman v. County of Santa Clara, 995 F.2d 898, 904 (9th Cir. 1993). If a  
2 constitutionally protected liberty or property interest exists, then the government must generally  
3 provide the deprived individual due process in the form of notice and an opportunity to respond.  
4 See Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 546 (1985).

5 Construing the SAC liberally, the allegations permit an inference that plaintiff has some  
6 type of property interest in the commercial building. Plaintiff further alleges she was deprived of  
7 her personal property in the form of the retail goods inside the building when defendant Juhasz  
8 ordered her locks cut. Plaintiff alleges this occurred without prior notice and without an  
9 opportunity to be heard either before or after the deprivation. (ECF No. 28 at 4, 14.)

10 Defendants argue the SAC is not clear as to what legal procedures plaintiff was allegedly  
11 entitled to and at what point, on what basis the defendants were required to initiate the  
12 procedures, or in what manner plaintiff was denied access to any particular procedure. Defendants  
13 note the SAC lists a number of city ordinances which plaintiff claims were not applied to her.  
14 Defendants argue plaintiff fails to explain the content of the ordinances, how they are relevant,  
15 why they should have applied to her, or in what manner the alleged failure to apply the  
16 ordinances resulted in a constitutional violation. (ECF No. 29-1 at 6-7.)

17 In order to state a procedural due process claim, a plaintiff must allege: (1) a deprivation  
18 of a constitutionally protected liberty or property interest, and (2) a denial of adequate procedural  
19 protections. Kildare v. Saenz, 325 F.3d 1078, 1085 (9th Cir. 2003); see Bd. of Regents v. Roth,  
20 408 U.S. 564, 569-70 (1972). “The fundamental requirement of due process is the opportunity to  
21 be heard ‘at a meaningful time and in a meaningful manner.’” Matthews v. Eldridge, 424 U.S.  
22 319, 333 (1976). “[D]ue process is flexible and calls for such procedural protections as the  
23 particular situation demands.” Id. at 334.

24 Defendants do not cite any authority, however, for the proposition that, in order to state a  
25 valid claim, plaintiff must identify the specific procedures to which she was entitled as well as at  
26 what point or in what manner. Although the procedures pursuant to which the alleged deprivation  
27 occurred remain unclear, the undersigned finds it cannot be said that further leave to amend  
28 would be futile as to a procedural due process claim. See Gates v. Alameda Cty. Sheriff’s Dep’t,

1 No. C-12-1429 EMC, 2012 WL 3537040, at \*8 (N.D. Cal. Aug. 14, 2012) (finding a due process  
2 claim sufficiently well pled to survive a Rule 12(b)(6) motion to dismiss where facts alleged  
3 provided “few details of the procedures used”); see also Mitchell v. City of Los Angeles, No.  
4 CV16-01750 SJO GJSX, 2016 WL 11519289, at \*3 (C.D. Cal. May 6, 2016) (holding the  
5 plaintiffs stated a valid procedural due process claim based on seizing property from homeless  
6 people pursuant to a municipal ordinance and then storing it in places that were difficult to  
7 access).

8 As set forth, the SAC alleges defendant Juhasz may be personally involved in that he  
9 directed the cutting of plaintiff’s locks and her removal from the building. Although it is being  
10 recommended the motion to dismiss be granted, it is further recommended plaintiff be granted  
11 leave to file a third amended complaint attempting to state a procedural due process claim.

#### 12 **G. QUALIFIED IMMUNITY**

13 Defendants assert they are entitled to qualified immunity to the extent the SAC pleads  
14 facts involving the individual defendants’ liability for the denial of a building inspection.  
15 Defendants argue qualified immunity is warranted because a reasonable city official would not  
16 understand the decision not to inspect a building could be unlawful. (ECF No. 29-1 at 8.) The  
17 undersigned finds the SAC fails to state a claim based on the denial of a building inspection.  
18 Accordingly, whether defendants would be entitled to qualified immunity for that alleged conduct  
19 need not be determined.

#### 20 **H. GUIDELINES FOR A FURTHER AMENDED COMPLAINT IN THE** 21 **EVENT THESE FINDINGS AND RECOMMENDATIONS ARE ADOPTED**

22 It bears repeating that if these findings and recommendations are adopted by the district  
23 judge, and if plaintiff thereafter files a third amended complaint, she should focus on stating the  
24 facts of what happened, to the best of her knowledge, in chronological order and using plain  
25 language. In addition, while plaintiff may identify her legal claims, she should avoid reliance on  
26 legal conclusions or statements of the law when setting forth the facts of what happened. In the  
27 event these findings and recommendations are adopted, plaintiff shall not include in any third  
28 amended complaint claims against defendants who have been dismissed without leave to amend.

1 **IV. CONCLUSION**

2 Plaintiff has been granted leave to amend on two prior occasions in this case. The  
3 undersigned finds plaintiff may be able to state a valid federal claim only against defendant  
4 Juhasz. It does not appear that further leave to amend would facilitate plaintiff to state valid  
5 federal claims against the City of Dunsmuir, defendant Lucchessi, or defendant Padilla. See  
6 Gardner v. Marino, 563 F.3d 981, 990 (9th Cir. 2009) (a district court should grant leave to  
7 amend unless doing so would be futile).

8 Accordingly, IT IS RECOMMENDED:

- 9
- 10 1. Defendants' motion to dismiss (ECF No. 29) be granted in part and denied in part;
  - 11 2. Defendants' motion to dismiss be denied to the extent that plaintiff be granted leave to  
12 file a third amended complaint naming defendant Juhasz within 30 days after any  
13 order adopting these findings and recommendations; in all other respects as set forth  
14 herein the motion to dismiss be granted; and
  - 15 3. All claims against defendants Lucchessi, Padilla and the City of Dunsmuir be  
16 dismissed without further leave to amend.

17 These findings and recommendations are submitted to the United States District Judge  
18 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
19 after being served with these findings and recommendations, any party may file written  
20 objections with the court and serve a copy on all parties. Such a document should be captioned  
21 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the  
22 objections shall be served and filed within fourteen days after service of the objections. The  
23 parties are advised that failure to file objections within the specified time may waive the right to  
24 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

25 Dated: April 29, 2021

26   
CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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